IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 598 of 1993

With

CRIMINAL APPEAL No. 599 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
SOMABHAI RANCHHODBHAI PATEL - Opponent(s)

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Appearance :
MR HL JANI APP for Appellant(s) : 1,
MR BJ JADEJA for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/10/2007

ORAL JUDGMENT

1.0 These appeals are directed against the judgment and order dated 25.02.1993 passed by the learned Judicial Magistrate, First Class, Bardoli in Criminal Case No. 3239 of 1989 and 3250 of

1989 whereby, both the appeals were dismissed and the respondent – accused was acquitted of the charges levelled against him.

2.0 The brief facts of the prosecution case are as under;

2.1 The respondent herein was serving as a Talati-cum-Mantri with the appellant – State. In the year 1989, two different complaints came to be filed against the respondent – accused alleging that during the periods from 12.11.1982 – 10.01.1989 and 17.01.1989 – 04.04.1989, the respondent – accused had misappropriated funds of the appellant – State to the tune of Rs.47,954.55 and Rs.4823.65 respectively. Necessary investigation was carried out and statements of witnesses were recorded. At the end of investigation, charge-sheet was filed against the respondents in the Court of learned J.M.F.C., Bardoli and trial was conducted against him.

2.2 In order to prove the guilt against the respondent, the prosecution has examined the complainant – Thakarbhai Ramjibhai Vasava as PW – 1 at Exhibit – 10, Ishwarbhai Nathubhai as PW – 2 at Exhibit – 13, Maganbhai Karsanbhai Tailor as PW – 3 at Exhibit – 14, Virsinh Kalyanbhai Chaudhary as PW – 4 at Exhibit – 15, Bhagubhai Chitubhai Patel as PW – 5 at Exhibit – 16, Kiritbhai Ramanlal Shah as PW – 6 at Exhibit – 17 and Kuberbhai Muljibhai Desai as PW – 7 at Exhibit – 19 and has also relied upon several documentary evidence. At the end of trial, the learned Magistrate acquitted the respondent of the charges

levelled against him. Hence, these appeals.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a

> power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 After considering the entire oral as well as documentary evidence on record, the trial Court has come to a finding that prior to the filing of the impugned complaints, the respondent – accused had already paid-up the disputed amounts in question and that in spite of the payment of the said amounts, the impugned complaints have been filed against him. The said fact has also been admitted by the officials of the appellant – State in their depositions before the Court below. It appears that the alleged offence in question took place on account of heavy official work load on the respondent – accused and that there was no motive behind

committing such offence. The said fact of heavy official work load on the respondent – accused, at the relevant point of time, is also admitted by the officials of the appellant – State in their cross-examination.

7.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

8.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9.0 In the result, both the appeals are dismissed. Office is

directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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